

PRIVILEGES OF THE FLOOR

Mr. MERKLEY. Mr. President, I ask unanimous consent that my intern, Lisa Smith, be granted privileges of the floor for the remainder of the day.

The PRESIDING OFFICER. Without objection.

Mr. COONS. Mr. President, I ask unanimous consent that a member of my staff, Erica Sensenbrenner, be granted privileges of the floor for the duration of today's session.

The PRESIDING OFFICER. Without objection, it is so ordered.

CRIMINAL ANTITRUST ANTI-RETALIATION ACT OF 2015

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 151, S. 1599.

The PRESIDING OFFICER. The clerk will report the bill by title.

The senior assistant legislative clerk read as follows:

A bill (S. 1599) to provide anti-retaliation protections for antitrust whistleblowers.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Criminal Anti-Retaliation Act of 2015".

SEC. 2. AMENDMENT TO ACPERA.

The Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (Public Law 108-237; 15 U.S.C. 1 note) is amended by inserting after section 215 the following:

"SEC. 216. ANTI-RETALIATION PROTECTION FOR WHISTLEBLOWERS.

"(a) WHISTLEBLOWER PROTECTIONS FOR EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, AND AGENTS.—

"(1) IN GENERAL.—No employer may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against a covered individual in the terms and conditions of employment of the covered individual because of any lawful act done by the covered individual—

"(A) to provide or cause to be provided to the employer or the Federal Government information relating to—

"(i) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the antitrust laws; or

"(ii) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, another criminal law committed in conjunction with a potential violation of the antitrust laws or in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws; or

"(B) to cause to be filed, testify in, participate in, or otherwise assist a Federal Government investigation or a Federal Government proceeding filed or about to be filed (with any knowledge of the employer) relating to—

"(i) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the antitrust laws; or

"(ii) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, another criminal law committed in conjunction with a potential violation of the antitrust laws or in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws.

"(2) LIMITATION ON PROTECTIONS.—Paragraph (1) shall not apply to any covered individual if—

"(A) the covered individual planned and initiated a violation or attempted violation of the antitrust laws;

"(B) the covered individual planned and initiated a violation or attempted violation of another criminal law in conjunction with a violation or attempted violation of the antitrust laws; or

"(C) the covered individual planned and initiated an obstruction or attempted obstruction of an investigation by the Department of Justice of a violation of the antitrust laws.

"(3) DEFINITIONS.—In this section:

"(A) ANTITRUST LAWS.—The term 'antitrust laws' means section 1 or 3 of the Sherman Act (15 U.S.C. 1 and 3).

"(B) COVERED INDIVIDUAL.—The term 'covered individual' means an employee, contractor, subcontractor, or agent of an employer.

"(C) EMPLOYER.—The term 'employer' means a person, or any officer, employee, contractor, subcontractor, or agent of such person.

"(D) FEDERAL GOVERNMENT.—The term 'Federal Government' means—

"(i) a Federal regulatory or law enforcement agency; or

"(ii) any Member of Congress or committee of Congress.

"(E) PERSON.—The term 'person' has the same meaning as in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)).

"(4) RULE OF CONSTRUCTION.—The term 'violation', with respect to the antitrust laws, shall not be construed to include a civil violation of any law that is not also a criminal violation.

"(b) ENFORCEMENT ACTION.—

"(1) IN GENERAL.—A covered individual who alleges discharge or other discrimination by any employer in violation of subsection (a) may seek relief under subsection (c) by—

"(A) filing a complaint with the Secretary of Labor; or

"(B) if the Secretary of Labor has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

"(2) PROCEDURE.—

"(A) IN GENERAL.—A complaint filed with the Secretary of Labor under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

"(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to any individual named in the complaint and to the employer.

"(C) BURDENS OF PROOF.—A complaint filed with the Secretary of Labor under paragraph (1)(A) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

"(D) STATUTE OF LIMITATIONS.—A complaint under paragraph (1)(A) shall be filed with the Secretary of Labor not later than 180 days after the date on which the violation occurs.

"(E) CIVIL ACTIONS TO ENFORCE.—If a person fails to comply with an order or preliminary order issued by the Secretary of Labor pursuant to the procedures set forth in section 42121(b) of title 49, United States Code, the Secretary of Labor or the person on whose behalf the order was issued may bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred.

"(c) REMEDIES.—

"(1) IN GENERAL.—A covered individual prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the covered individual whole.

"(2) COMPENSATORY DAMAGES.—Relief for any action under paragraph (1) shall include—

"(A) reinstatement with the same seniority status that the covered individual would have had, but for the discrimination;

"(B) the amount of back pay, with interest; and

"(C) compensation for any special damages sustained as a result of the discrimination including litigation costs, expert witness fees, and reasonable attorney's fees.

"(d) RIGHTS RETAINED BY WHISTLEBLOWERS.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any covered individual under any Federal or State law, or under any collective bargaining agreement."

Mr. LEAHY. Mr. President, I applaud the Senate is passing bipartisan legislation that will protect employees who blow the whistle on criminal antitrust violations. The Criminal Antitrust Anti-Retaliation Act is legislation that I have worked on with Senator GRASSLEY for three Congresses now. This is the second Congress in a row that the Senate has passed it unanimously. The bill is an extension of my longstanding partnership with Senator GRASSLEY on whistleblower issues.

Our bipartisan bill provides meaningful protections to employees who blow the whistle on the worst forms of anti-competitive behavior such as price fixing. Whistleblowers play an important role in alerting the public, Congress, and law enforcement agencies to wrongdoing in a number of areas. They often take significant risks in making these disclosures and can be the target of retaliation. The Criminal Antitrust Anti-Retaliation Act prohibits employers from retaliating against employees who alert the company, Congress, or law enforcement of criminal activity.

Senator GRASSLEY and I modeled this legislation on the whistleblower protections we authored as part of the Sarbanes-Oxley Act. The protections are narrowly tailored and do not provide whistleblowers with an economic incentive to bring forth false claims. Last Congress, we made modest changes to the bill in the Judiciary Committee to improve the definition of a covered individual and to clarify that protections only apply to employees reporting criminal violations. This Congress, we made additional refinements in the Judiciary Committee to further clarify the scope of the bill. The protections in this bill build on recommendations from key stakeholders in a 2011 Government Accountability Office report to Congress.

Consumers benefit from competitive markets and the antitrust laws serve to safeguard competition. By protecting those who would blow the whistle on criminal antitrust behavior, our bill will help facilitate the reporting of these kinds of violations. I urge the House to pass this bipartisan legislation.

I ask unanimous consent that a letter in support of the bill from the National Whistleblowers Center be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows: